IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. JACOB N. SHERMAN, Appellant.	)	No. 64926-4-I
	)	UNPUBLISHED OPINION
	)	FILED: August 2, 2010

schindler, j. — Jacob N. Sherman violated a domestic violence no-contact order for the third time by assaulting McKayla E. Smith. The State charged Sherman with felony violation of a no-contact order (FVNCO), a crime that requires the State to prove either two previous violations of a protection order or that he violated a protection order by committing an assault. On appeal, Sherman contends the court erred in denying the motion to suppress statements that he made to the police and his motion to bifurcate the trial. Sherman also argues that insufficient evidence supports his FVNCO conviction and the 2008 amendments to the Sentencing Reform Act (SRA), chapter 9.94A RCW, violate

his right to due process. We reject Sherman's arguments, and affirm.

FACTS

At approximately 2:30 a.m. on May 27, 2008, Hoquiam police officers responded to a 911 call at the Lincoln Common Apartments. A tenant in the D building called 911 to report that a woman was screaming for someone to call the police. The two-story D building of the apartment complex contains four apartments. When Sergeant Jeff Salstrom arrived, he saw a man walking down the stairway from the second floor of the D building. Sergeant Salstrom said that the man was "shirtless." The Sergeant "[c]alled out to him, told him to stop. . . ."

Sergeant Salstrom then approached the man, asked his name, and "asked him what was going on." The man told him his name was Jacob Sherman, that he lived in Hoquiam at 2435 Queets Avenue, and his date of birth was April 27, 1986. Sergeant Salstrom testified that he then "tried to find out what had happened; you know, why it—why we had been called there."

While Sergeant Salstrom was talking to Sherman, Officer Jeremy Mitchell spoke to McKayla Smith. Officer Mitchell testified that her shirt was ripped and Smith was "shaking," "crying," and appeared to be "in fear of something." Smith showed Officer Mitchell a bite mark on her right forearm and cuts on the inside of her lip and her mouth. Officer Mitchell said that he "could see teeth impressions with scrapes on her forearm" and the cuts inside her mouth "appeared fresh." Officer Mitchell took photos of the injuries.

After Officer Mitchell talked to Smith, he reported what he had learned to Sergeant Salstrom. Sergeant Salstrom then asked Sherman if he bit Smith. Sherman told the officers that "Ms. Smith had—had bit him on the thumb while the two were having sexual relations and that he denied actually any assault against her." The police arrested Sherman for domestic violence assault and advised him of his Miranda rights.[1]

The State charged Sherman with FVNCO. The State alleged that a "Domestic Violence No-Contact Order (Misdemeanor)" issued by the Hoquiam Municipal Court on February 26, 2008 prohibited Sherman from having any contact with Smith until June 30, 2008. In count one, the State alleged that Sherman violated the terms of a February 2006 no-contact order by assaulting Smith in violation of former RCW 26.50.110(2007). In count two, the State charged Sherman with FVNCO under former RCW 26.50.110(5) based on two previous convictions for violation of a protection order.

On September 17, the State filed an amended information alleging one count of FVNCO committed by either assaulting Smith in violation of the no-contact order issued by the Hoquiam Municipal Court or, in the alternative, by proving that Sherman had two prior convictions for violation of a protection order.

The trial began on September 18. Smith testified that sometime after 10:00 p.m. on May 27, Sherman arrived at her apartment unannounced. Smith

[1] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

said that she and Sherman argued and the argument escalated to "some pushing." Smith testified that she told Sherman to leave three or four times, but he refused. Smith said that she left the apartment and went down to the parking lot to her van, that Sherman followed her, and started choking her. Smith escaped and returned to the apartment to wake up her two young children to leave. Smith said that Sherman returned to the apartment and choked her again. Smith testified that he squeezed her face so she could not scream, but she was able to bang her foot on the floor in an attempt to alert the neighbors that she needed help.

Smith said that during the course of the altercation, Sherman ripped off her shirt and took her cell phone away. She testified that she had cuts on her lip and the inside of her mouth and that Sherman bit her arm. "I had like I guess you could say cuts—I'm not quite sure—on the inside of my mouth. My lip had a couple of cuts and I had a big bite right here on my elbow that ended up turning into a bruise." Smith testified that a no-contact order issued in February 2008 by the Hoquiam Municipal Court prohibited Sherman from having contact with her, but she believed the order had expired by May.

Smith's neighbors Erin and Timothy Brashar live in the apartment below Smith and called 911. Erin and Timothy testified that they heard Smith crying and screaming to call the police. Erin and Timothy said that Smith was stomping on the floor of her apartment and they heard her yell-- "you're not going to hurt my

kids."

The court admitted the February 26, 2008 domestic violence no-contact order issued by the Hoquiam Municipal Court into evidence. The order prohibited Sherman from contacting Smith until June 30, 2008. The court also admitted a certified copy of the Thurston County District Court 2004 docket for conviction of violating the terms of a protection order under RCW 26.50.110, and a certified copy of a Thurston County Superior Court judgment and sentence for a 2006 conviction of "assault in violation of a protection order" under RCW 26.50.110. Sherman objected to admission of the certified copy of the 2004 docket from Thurston County District Court. [2]

The jury found Sherman guilty of FNVCO. In the special verdict form, the jury answered "yes" to the question "[w]as the conduct that constituted a violation of the no[-]contact order an assault?", and "yes" to the question of whether Sherman had "twice been previously convicted for violating the provisions of a no[-]contact order." The court imposed a standard range sentence of 43 months.

ANALYSIS

Motion to Suppress

Sherman claims the trial court erred in allowing Sergeant Salstrom to testify that Sherman said he bit Smith during sex because the statement was made while he was in custody but before the police advised him of his Miranda rights.

[2] The defense objected to the admission of the Thurston County District Court docket on the grounds that the best evidence of the conviction was a certified copy of the judgment and sentence.

Pretrial, the court ruled that the police lawfully detained and questioned Sherman during an investigative stop and Sherman was not in custody when he made the statement.

> When the officers arrived at the scene they did not have probable cause to arrest the defendant. However, they had the right to detain the defendant for a reasonable period of time as they had a reasonable, articulable suspicion that the defendant was involved in some way with the incident they were there to investigate. As the defendant was not in custody, he was not entitled to Miranda warnings.

Sherman argues that the court erred in concluding that the statement was made in the context of an investigative stop. Sherman contends the questioning was custodial interrogation because the police ordered him to stop and he was not free to leave during the four to five minutes he was detained.

We review the trial court's decision after a CrR 3.5 hearing to determine whether substantial evidence supports the trial court's findings of fact, and whether those findings support the conclusions of law. State v. Broadaway, 133 Wn.2d 118, 130-31, 942 P.2d 363 (1997). Unchallenged findings are verities on appeal. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). We review conclusions of law de novo. State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

Whether the defendant was in custody is a mixed question of fact and law. State v. Solomon, 114 Wn. App. 781, 787, 60 P.3d 1215 (2002).

> The factual inquiry determines 'the circumstances surrounding the interrogation.' The legal inquiry determines, given the

> factual circumstances, whether 'a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave.'

Solomon, 114 Wn. App. at 787-88 (citation omitted) (quoting Thompson v. Keohane, 516 U.S. 99, 112-13, 116 S. Ct. 457, 133 L. Ed. 2d 383 (1995)). Because the facts are not in dispute, we review the trial court's determination that Sherman was not in custody de novo. Solomon, 114 Wn. App. at 789 (de novo review applies to question of whether a reasonable person in the defendant's situation would have believed he was not free to end the questioning and leave); State v. Lorenz, 152 Wn.2d 22, 36, 93 P.3d 133 (2004) (trial court's custodial determination reviewed de novo).

The Fourth Amendment and article I, section 7 of the Washington State Constitution prohibit unreasonable searches and seizures. State v. Day, 161 Wn.2d 889, 893, 168 P.3d 1265 (2007). Miranda warnings must be given whenever a suspect is subject to custodial interrogation by police. State v. Heritage, 152 Wn.2d 210, 214, 95 P.3d 345 (2004). A person is in "custody" if after considering the circumstances, a reasonable person would feel that his or her freedom was curtailed to a degree associated with a formal arrest. As a general rule, a warrantless seizure is per se unreasonable and the State bears the burden of demonstrating the applicability of a recognized exception. Day, 161 Wn.2d at 893-94. A well-established exception allows the police to briefly stop and detain a person who the police reasonably suspect is engaged in

criminal conduct. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); Day, 161 Wn.2d at 895.

A Terry stop is a seizure for purposes of the Fourth Amendment. Berkemer v. McCarty, 468 U.S. 420, 439-40, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984). But unlike a formal arrest, a Terry stop is brief and less coercive than the police interrogation contemplated by Miranda. Heritage, 152 Wn.2d at 218. "Unlike a formal arrest, a typical Terry stop is not inherently coercive because the detention is presumptively temporary and brief, is relatively less 'police dominated', and does not easily lend itself to deceptive interrogation tactics.'" State v. Walton, 67 Wn. App. 127, 130, 834 P.2d 624 (1992) (quoting Berkemer, 468 U.S. at 439). To justify a warrantless Terry stop, the State must be able to point to specific and articulable facts giving rise to a reasonable suspicion that the person stopped is, or is about to be, engaged in criminal activity.

When justified, "a detaining officer may ask a moderate number of questions during a Terry stop to determine the identity of the suspect and to confirm or dispel the officer's suspicions without rendering the suspect 'in custody' for the purposes of Miranda." Heritage, 152 Wn.2d at 219. By definition, a person subject to an investigative detention under Terry is not "free to leave." State v. Kennedy, 107 Wn.2d 1, 4, 726 P.2d 445 (1986) ("a stop, although less intrusive than an arrest, is nevertheless a seizure"); see State v. Marcum, 149 Wn. App. 894, 909-10, 205 P.3d 969 (2009) (the fact that numerous

police vehicles surrounded the suspect's vehicle in a parking lot did not convert the detention into a custodial arrest).

A person is not in custody simply because the person is detained and questioned by police. While a Terry stop involves a degree of restraint, a routine investigative encounter does not require Miranda warnings. Heritage, 152 Wn.2d at 218; Berkemer, 468 U.S. at 439-40 (Fourth Amendment seizure of a suspect, in the context of a routine, on-the-street Terry stop, does not rise to the level of "custody" for purposes of Miranda). Statements made in the context of a Terry stop are noncustodial even though the suspect may not be free to leave when the statements are made. Walton, 67 Wn. App. at 130 (statements were noncustodial even though police officer testified that he would have arrested the defendant if he attempted to leave).

An investigative encounter or detention must be "reasonably related in scope to the justification for [its] initiation. . . ." Terry, 392 U.S. at 29. The lawful scope of a Terry stop may be enlarged or prolonged as needed, and the officer may "'maintain the status quo momentarily while obtaining more information.'" State v. Smith, 115 Wn.2d 775, 785, 801 P.2d 975 (1990); State v. Williams, 102 Wn.2d 733, 737, 689 P.2d 1065 (1984) (quoting Adams v. Williams, 407 U.S. 143, 146, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972)).

Here, the police had reasonable grounds to justify a Terry stop. The police responded to a 911 call of a woman screaming for help, at approximately 2:30

a.m. Sergeant Salstrom saw a man without his shirt coming down the stairway from the apartment building identified in the 911 call. Sergeant Salstrom told the man to stop, asked for his name and address, and asked him "what was going on." The record indicates that Sherman voluntarily provided his name, his date of birth and his address. Sergeant Salstrom maintained the status quo until he could learn what Smith had reported to Officer Mitchell. Thereafter, Sergeant Salstrom asked Sherman whether he bit Smith and Sherman voluntarily responded. The detention was extremely brief, lasting approximately four minutes. The officers had a specific and articulable basis to suspect Sherman may have been involved in criminal activity. The trial court did not err in concluding that Sherman was not in custody for purposes of Miranda and admitting Sherman's statements to police.

Motion to Bifurcate

Sherman also contends the court abused its discretion in denying his motion to bifurcate the trial to separately try the alternative means of committing FVNCO by proving that he had two previous violations of a protection order. We review a trial court's denial of a motion to bifurcate for abuse of discretion. State v. Roswell, 165 Wn.2d 186, 192, 196 P.3d 705 (2008). We review questions of law de novo. Roswell, 165 Wn.2d at 192.

Violation of a no-contact order is a felony when the offender has two prior convictions for violation of a protection order or when the defendant violates a

protection order by committing an assault. Former RCW 26.50.110(4), (5).[3] Where there are two or more alternative ways to commit a crime, the State can charge both alternative means. State v. Scott, 64 Wn.2d 992, 993, 395 P.2d 377 (1964).

Here, the court granted the State's motion to amend the information to charge Sherman with FVNCO by either proving that he violated a protection order by assaulting Smith or by proving that he had two prior convictions for violating a protection order.

The defense asked the court to bifurcate the trial on the alternative means of proving two prior violations of a protection order. The trial court denied the motion to bifurcate. "I am not going to bifurcate the trial in that fashion. I don't think I can do so without running afoul of double jeopardy problems in the event of a not guilty verdict."

Relying on State v. Roswell, Sherman asserts the trial court erred in denying his motion to bifurcate. State v. Roswell does not support Sherman's

[3] Former RCW 26.50.110(4), (5) provides:

(4) Any assault that is a violation of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 10.99, 26.09, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

argument.

In Roswell, the State charged Roswell with felony communication with a minor for immoral purposes. The crime required the State to prove that he had a prior conviction for a felony sex offense. Roswell, 165 Wn.2d at 190. Roswell argued that his prior conviction was a sentencing factor rather than an element of the crime. The trial court denied Roswell's request to bifurcate the trial and exclude evidence of his prior conviction. Roswell, 165 Wn.2d at 191.

The Washington Supreme Court affirmed the trial court's decision to deny the motion to bifurcate. The court held that the defendant was not entitled to a bifurcated trial and did not have a "right to waive [his] right to a trial by jury on certain elements so as to prevent the jury from hearing prejudicial evidence." Roswell, 165 Wn.2d at 197. However, recognizing the inevitable prejudice to the defendant in admitting evidence of prior convictions, the court stated that although not required to do so, if feasible, the trial court could take measures to mitigate the prejudice. Specifically, the court pointed to the procedure approved in State v. Oster, 147 Wn.2d 141, 52 P.3d 26 (2002), where the court set forth the elements of misdemeanor violation of a no-contact order in the to-convict instruction and provided a special verdict form to determine whether the State proved the prior convictions. Oster, 147 Wn.2d at 143. The court also noted that an alternative approach would be to allow the defendant to stipulate to the prior convictions and present a sanitized version of that evidence.

Here, the trial court did not abuse its discretion in denying Sherman's motion to bifurcate and try the alternative means charged by the State of proving two prior violations of a protection order. [4]

Sufficiency of the Evidence

Sherman also argues that his conviction violates due process because the evidence does not establish the essential elements of the crime. The State must prove each essential element of the crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); Oster, 147 Wn.2d at 146.

To convict a defendant of FVNCO, the State must prove beyond a reasonable doubt that a valid protection order applied to the defendant, that the defendant knew of the existence of the order, and that the defendant knowingly violated the order by committing an assault or that the defendant had two prior violations of a protection order. Former RCW 26.50.110(4), (5); State v. Clowes, 104 Wn. App. 935, 944, 18 P.3d 596 (2001).

Evidence is sufficient if when viewed in the light most favorable to the State any rational trier of fact could have found each element of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A challenge to the sufficiency of the evidence admits the truth of the

[4] We also note that Sherman did not request a to-convict instruction like the one used in Oster. Nor did Sherman agree to stipulate to the prior convictions.

State's evidence, and "[a]ll reasonable inferences from the evidence must be drawn in favor of the State and most strongly against the defendant." State v. Gallagher, 112 Wn. App. 601, 613, 51 P.3d 100 (2002).

Sherman claims the State did not prove beyond a reasonable doubt that he is the person identified in the Hoquiam Municipal Court protection order because his signature on the order is illegible and does not match the signature on other documents admitted at trial. Sherman also argues that if he was later acquitted or the charges were dismissed, the protection order would not apply.

The court admitted into evidence the February 26, 2008 "Domestic Violence No-Contact Order" issued by the Hoquiam Municipal Court, a certified copy of the 2006 judgment and sentence for violation of a no-contact order, and a certified copy of the docket for the 2004 conviction in Thurston County District Court for violation of a protection order. All three exhibits identify Sherman by name and state that his birth date is April 27, 1986, the same date of birth Sherman gave to Sergeant Salstrom when he was detained on May 27. Sufficient evidence supports the jury determination that Sherman was the person identified in the two prior convictions for violation of a protection order. The certified copy of the docket for Sherman's 2004 conviction also specifically states that his address is 2435 Queets Avenue in Hoquiam, the same address Sherman gave to the police on May 27.

Sherman points to no evidence that he was acquitted or the charges were

dismissed. Smith testified that the pretrial no-contact order issued by Hoquiam Municipal Court prohibited Sherman from having any contact with her. Although she believed the order expired in May, the terms of the no-contact order clearly state that "This No-Contact Order expires on: 6/30/08." We conclude the evidence establishes that the Hoquiam Municipal Court issued a valid protection order prohibiting Sherman from having contact with Smith on May 27, 2008.

Sherman also challenges the finding that he had two previous convictions for violating a no-contact order.[5] Sherman acknowledges that the State can prove the existence of a prior conviction through the introduction of documents other than a certified copy of the judgment and sentence, but claims that the certified copy of the docket for the 2004 Thurston County conviction was too "insubstantial."[6] See State v. Herzog, 48 Wn. App. 831, 834, 740 P.2d 380 (1987) (to establish criminal history, the State may introduce any document of record or transcripts of prior proceedings).

The Thurston County Court Administrator testified at trial and explained the entries in the certified copy of the docket for the 2004 conviction of violating a protection order. The Court Administrator identified the defendant as "Jacob Nathaniel Sherman," with a violation date of May 5, 2004, and entry of the guilty plea on August 9, 2004, with a disposition of guilty. The docket also identifies

[5] Sherman does not challenge the jury finding that he committed FVNCO by assaulting Smith.

[6] Sherman also contends the State failed to sufficiently connect the judgment and sentence for the 2006 conviction to him. But as previously explained, Sherman's argument is unpersuasive. The 2006 judgment and sentence for FVNCO lists the same birth date and name that he gave to the police on May 27.

Sherman's date of birth as April 27, 1986 and his address as 2435 Queets Avenue in Hoquiam, the same date of birth and address that Sherman gave to police on May 27, 2008. We conclude sufficient evidence supports Sherman conviction of FVNCO based on the two prior convictions for violating a protection order.

Sentencing

The court imposed a standard range sentence of 43 months with an offender score of five. The offender score was based on the 2006 FVNCO conviction, two convictions in 2006 for rape of a child in the second degree, and three juvenile convictions for malicious mischief in the second degree. Sherman acknowledged in his sentencing memorandum, that he had "previously been convicted of two counts of rape of a child in the second degree in Grays Harbor Superior Court No. 05-1-00609-1" and asked the court to impose "the low end of the standard range."[7]

At sentencing, the prosecutor noted that Sherman did not dispute the offender score calculation of five, and asked the court to impose a sentence in the "middle of the standard range." Defense counsel reiterated the request for a sentence at the "low end of the standard range." The court imposed a 43-month sentence.[8]

[7] In his 2006 Statement of Defendant on Plea of Guilty for rape of a child in the second degree, Sherman also agreed that his offender score was a "5."

[8] Before sentencing, the State filed a motion to revoke Sherman's Special Sex Offender Sentence Alternative (SSOSA) for the two counts of second-degree rape of a child. After sentencing Sherman on the

For the first time on appeal, Sherman claims the trial court improperly relied on the State's representation of his criminal history in calculating an offender score of five. Sherman contends the 2008 amendments to the SRA violate his right to due process and unconstitutionally relieve the State of its burden of proving criminal history. The 2008 amendments to the SRA state that the prosecutor's summary of the defendant's criminal history constitutes "prima facie evidence" and the defendant's failure to object to criminal history at sentencing

FVNCO conviction, the court granted the State's motion to revoke the SSOSA sentence and imposed the previously-suspended 130-month sentence. The court imposed the 43-month sentence to run consecutively with the 130-month sentence. The revocation of the SSOSA is not at issue in this appeal.

amounts to an acknowledgment.[9] Sherman relies on State v. Ford, 137 Wn.2d 472, 482, 973 P.2d 452 (1999) to argue he can challenge his sentence for the first time on appeal. In Ford, the court held that the defendant could challenge his offender score on the ground of the legal comparability of out-of-state convictions even though he did not raise the specific issue at sentencing.

A statute is presumed constitutional, and the party challenging the legislation bears the burden of proving the legislation is unconstitutional beyond a reasonable doubt. State ex rel. Peninsula Neighborhood Ass'n v. Dep't of Transp., 142 Wn.2d 328, 335, 12 P.3d 134 (2000). This court reviews de novo challenges to the constitutionality of legislation. City of Fircrest v. Jensen, 158 Wn.2d 384, 389, 143 P.3d 776 (2006). Analysis of this issue must begin with the premise that "'it is the function of the legislature, not of the judiciary to alter the

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[9] Specifically, RCW 9.94A.500(1) was amended to provide:

> (1) A criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be prima facie evidence of the existence and validity of the convictions listed therein.

Laws of 2008, ch. 231, § 2. Acknowledgment was also redefined in RCW 9.94A.530(2):

> (2) In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to RCW 9.94A.537. Acknowledgment includes not objecting to information stated in the presentence reports and not objecting to criminal history presented at the time of sentencing. Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point.

Laws of 2008, ch. 231, § 4.

sentencing process.'" State v. Ammons, 105 Wn.2d 175, 180, 713 P.2d 719 (1986) (quoting State v. Monday, 85 Wn.2d 906-10, 540 P.2d 416 (1975) (rejecting challenges to the SRA as violative of the separation of powers doctrine, due process clause and the privilege against self incrimination).

A defendant cannot argue the constitutionality of a statute unless he has been adversely affected by the provisions he claims are unconstitutional. State v. Lundquist, 60 Wn.2d 397, 401, 374 P.2d 246 (1962). A litigant does not have standing to challenge a statute on constitutional grounds unless that litigant has suffered actual damage or injury under the statute. Kadoranian by Peach v. Bellingham Police Dep't, 119 Wn.2d 178, 191, 829 P.2d 1061 (1992).

Here, Sherman cannot show that he has been adversely affected or suffered actual damage or injury at the sentencing in this case based on the 2008 SRA amendments. Sherman does not dispute that he pleaded guilty in 2006 to two counts of rape in the second degree and that he agreed that his offender score was a five. Consistent with his position at the sentencing on the rape convictions in 2005, defense counsel stated that Sherman had an offender score of five.[10]

We affirm.

WE CONCUR:

[10] The record also does not indicate whether the court relied on the 2008 amendments to the SRA.